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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,392	09/08/2003	Garret J. Buban	13768.783.78	9365

47973 7590 03/21/2007  
WORKMAN NYDEGGER/MICROSOFT  
1000 EAGLE GATE TOWER  
60 EAST SOUTH TEMPLE  
SALT LAKE CITY, UT 84111

EXAMINER
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INGBERG, TODD D

ART UNIT	PAPER NUMBER
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2193

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/21/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/657,392

Applicant(s)

BUBAN ET AL.

Examiner

Todd Ingberg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17,39-43 and 46-56 is/are pending in the application.
- 4a) Of the above claim(s) 18-38,44 and 45 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17,39-43 and 46-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 9/8/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Claims 1 – 56 were originally filed

After Restriction Practice Applicant Elects

Group I – Claims 1 – 17, 39-43 and 46 – 56.

Group II and II claims have been canceled.

Non elected claims can be filed as Divisional Applications.

#### ***Drawings***

1. The drawings filed September 8, 2003 have been approved.

#### ***Specification***

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. Words like “Method” and “System” should be removed. title should reflect the claimed invention after the Restriction.
3. The Abstract contains legal words “Method” and “System”

#### ***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1 – 6, 39-43 and 46-56 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The current focus of the Patent Office in regard to statutory inventions under 35 U.S.C. § 101 for method claims and claims that recite a judicial exception (software) is that the claimed invention recite a practical application. Practical application can be provided by a physical transformation or a useful, concrete and tangible result.

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No physical transformation is recited and additionally, the final result of the claim is for a software support tool which is not a tangible result because the claims lack decisive action resulting in a result being tangibly embodied and capable of execution. The following link on the World Wide Web is for the United States Patent And Trademark Office (USPTO) policy on 35 U.S.C. §101.

[http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101\\_20051026.pdf](http://www.uspto.gov/web/offices/pac/dapp/opla/preognotice/guidelines101_20051026.pdf)

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1 – 17, 39-43 and 46 – 56 are rejected under 35 U.S.C. 102(b) as being anticipated by Microsoft USPN # 6,434,744 Chamberlain et al filed March 3, 1999, issued August 13, 2002.

#### **Claim 1**

A computer system for servicing software, comprising:  
a target system having binary files built from a source version of software code; an installer capable of executing on the target system for selecting one of at least two different update versions packaged within an update package for installation on the target system, the installer having a migrator for automatically reinstalling a fix after installation of one of the update versions.

#### **Examiner's Rejection for Claim 1**

A system and method for patching an installed application program and making an installer program aware that an application has been patched is disclosed. The system and method recognizes that a patch has been launched to update the application, the patch including an identifier for the application and information related to a desired change to the application. In response, the installer program accesses a first information store containing information related to a series of functions for installing the application. The installer program also accesses a second information store containing information related to the installed state of the application. Then,

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the installer program modifies the first information store in accordance with the desired change to the application such that the modified first information store includes additional functions for applying the patch to the application. The installer program then initiates a reinstallation of the application based on the modified first information store such that the desired change is reflected in the application after the reinstallation, i.e., the application is patched. Finally, the installer program stores a new installed state of the application in the second information store, the new installed state including an indication that the patch exists for the application and information related to the desired change to the application. (Chamberlain, Abstract).

**Claim 2**

The system of claim 1 further comprising an uninstaller capable of executing on the target system for uninstalling a version of the update package installed on the target system. As per claim 1.

**Claim 3**

The system of claim 1 further comprising an extractor capable of executing on the target machine for extracting an updated binary file from the update package. Figure 3, #230.

**Claim 4**

The system of claim 2 wherein the uninstaller comprises a reverse migrator for uninstalling a migrated fix prior to uninstallation of one of the versions of the update package. As per claim 1.

**Claim 5**

The system of claim 1 wherein one of the two different versions comprises a release version. As per claim 1.

**Claim 6**

The system of claim 1 wherein one of the two different versions comprises a branch version. Figure 3, #250 and Figure 7.

**Claim 7**

A method for servicing software in a computer system, comprising the steps of:

identifying an update package having one of at least two different versions of an updated binary file for installation on a target machine having a version of executable files; selecting one of the at least two different versions of an updated binary file for installation on the target machine; and persisting another version of the updated binary file from the update package for automatic reinstallation on the target machine after future installation of a higher version of executable files on the target machine.

**Examiner's Rejection for Claim 7**

A system and method for patching an installed application program and making an installer program aware that an application has been patched is disclosed. The system and method recognizes that a patch has been launched to update the application, the patch including an identifier for the application and information related to a desired change to the application. In response, the installer program accesses a first information store containing information related

to a series of functions for installing the application. The installer program also accesses a second information store containing information related to the installed state of the application. Then, the installer program modifies the first information store in accordance with the desired change to the application such that the modified first information store includes additional functions for applying the patch to the application. The installer program then initiates a reinstallation of the application based on the modified first information store such that the desired change is reflected in the application after the reinstallation, i.e., the application is patched. Finally, the installer program stores a new installed state of the application in the second information store, the new installed state including an indication that the patch exists for the application and information related to the desired change to the application. (Chamberlain, Abstract and Col 1, lines 43 – 54).

**Claim 8**

The method of claim 7 wherein selecting one of the at least two different versions comprises selecting one of at least two different release versions. Abstract, Software inventory.

**Claim 9**

The method of claim 7 wherein selecting one of the at least two different versions comprises selecting one of at least two different branch versions. Figure 3 # 200 and #210 to produce Figure 7.

**Claim 10**

The method of claim 7 further comprising the step of installing one of the at least two different versions of an updated binary file. As per claim 1 – binary patches.

**Claim 11**

The method of claim 10 further comprising the step of migrating a fix after installation of one of the at least two different versions of an updated binary file. As per claim 1.

**Claim 12**

The method of claim 11 further comprising the step of reverse migrating the fix prior to uninstalling the one of the at least two different versions of an updated binary file.  
As per claim 1.

**Claim 13**

The method of claim 10 further comprising the step of uninstalling the one of the at least two different versions of an updated binary file. As per claim 1.

**Claim 14**

The method of claim 7 wherein the selecting one of the at least two different versions of an updated binary file comprises migrating a fix on the target system. As per claim 1.

**Claim 15**

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The method of claim 7 wherein the selecting one of the at least two different versions of an updated binary file comprises stepping up to a higher branch version than the initial branch version selected for installation. As per claim 7.

**Claim 16**

The method of claim 7 wherein the selecting one of the at least two different versions of an updated binary file comprises comparing the release version of the updated binary file with a release version of the file on the target system. As per claim 2.

**Claim 17**

The method of claim 7 wherein the selecting one of the at least two different versions of an updated binary file comprises comparing the branch version of the updated binary file with a branch version of the file on the target system. As per claim 2.

**Claim 39**

A computer-readable medium having computer executable components, comprising:  
an installer capable of executing on a target system for selecting one of at least two different versions of an updated binary file for installation on the target system; and a migrator capable of executing on the target system for automatically reinstalling a fix after installation of one of the versions of an updated binary file.

Examiner's Rejection for Claim 39

A system and method for patching an installed application program and making an installer program aware that an application has been patched is disclosed. The system and method recognizes that a patch has been launched to update the application, the patch including an identifier for the application and information related to a desired change to the application. In response, the installer program accesses a first information store containing information related to a series of functions for installing the application. The installer program also accesses a second information store containing information related to the installed state of the application. Then, the installer program modifies the first information store in accordance with the desired change to the application such that the modified first information store includes additional functions for applying the patch to the application. The installer program then initiates a reinstallation of the application based on the modified first information store such that the desired change is reflected in the application after the reinstallation, i.e., the application is patched. Finally, the installer program stores a new installed state of the application in the second information store, the new installed state including an indication that the patch exists for the application and information related to the desired change to the application. (Chamberlain, Abstract and Col 1, lines 43 – 54) and The third information stream is termed the "cabinets" portion 506. The cabinets portion 506 include the actual program files, if any, added to the installed application by the patch. In addition, the cabinets portion 506 includes "patch bits," which are binary bits of information used during processing to modify or alter certain existing program files related to the installed application. Although illustrated here as an integral portion of the patch package 301, the cabinets portion 506 may be a file, such as a cabinet file, that is separate from the patch package 301. The cabinets portion 506 of the patch package 301 is analogous to the source 215 illustrated in FIG. 2. Since those skilled in the art are familiar with the use of cabinets or cabinet files in

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connection with application program patches, such files are not further described here (Chamberlain, col 9, lines 1 – 15)

**Claim 40**

The computer-executable components of claim 39 further comprising an uninstaller capable of executing on the target system for uninstalling a version of an updated binary file installed on the target system. As per claim 1.

**Claim 41**

The computer-executable components of claim 40 wherein the uninstaller comprises a reverse migration component for uninstalling a migrated fix prior to uninstallation of one of the versions of an updated binary file. As per claim 1.

**Claim 42**

The computer-executable components of claim 39 further comprising an extractor capable of executing on the target machine for extracting an updated binary file from an update package. As per claim 1.

**Claim 43**

A computer system for servicing software, comprising:

means for receiving an update package having one of at least two different versions of an updated binary file for installation on a target machine having a version of executable files;

means for selecting one of the at least two different versions of an updated binary file for installation on the target machine; and means for persisting another version of the updated binary file from the update package for automatic reinstallation on the target machine after future installation of a higher version of executable files on the target machine.

Examiner's Rejection for Claim 43

A system and method for patching an installed application program and making an installer program aware that an application has been patched is disclosed. The system and method recognizes that a patch has been launched to update the application, the patch including an identifier for the application and information related to a desired change to the application. In response, the installer program accesses a first information store containing information related to a series of functions for installing the application. The installer program also accesses a second information store containing information related to the installed state of the application. Then, the installer program modifies the first information store in accordance with the desired change to the application such that the modified first information store includes additional functions for applying the patch to the application. The installer program then initiates a reinstallation of the application based on the modified first information store such that the desired change is reflected in the application after the reinstallation, i.e., the application is patched. Finally, the installer program stores a new installed state of the application in the second information store, the new installed state including an indication that the patch exists for the application and information related to the desired change to the application. (Chamberlain, Abstract and Col 1, lines 43 – 54) and The third information stream is termed the "cabinets" portion 506. The cabinets portion 506 include the actual program files, if any, added to the installed application by the patch. In



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addition, the cabinets portion 506 includes "patch bits," which are binary bits of information used during processing to modify or alter certain existing program files related to the installed application. Although illustrated here as an integral portion of the patch package 301, the cabinets portion 506 may be a file, such as a cabinet file, that is separate from the patch package 301. The cabinets portion 506 of the patch package 301 is analogous to the source 215 illustrated in FIG. 2. Since those skilled in the art are familiar with the use of cabinets or cabinet files in connection with application program patches, such files are not further described here (Chamberlain, col 9, lines 1 – 15)

**Claim 46**

A computer-readable medium having computer executable instructions, comprising the steps of: identifying an update package having one of at least two different versions of an updated binary file for installation on a target machine having a version of executable files; selecting one of at least two different versions of an updated binary file for installation on the target machine; and persisting another version of the updated binary file from the update package for automatic reinstallation on the target machine after future installation of a higher version of executable files on the target machine.

**Examiner's Rejection for Claim 46**

A system and method for patching an installed application program and making an installer program aware that an application has been patched is disclosed. The system and method recognizes that a patch has been launched to update the application, the patch including an identifier for the application and information related to a desired change to the application. In response, the installer program accesses a first information store containing information related to a series of functions for installing the application. The installer program also accesses a second information store containing information related to the installed state of the application. Then, the installer program modifies the first information store in accordance with the desired change to the application such that the modified first information store includes additional functions for applying the patch to the application. The installer program then initiates a reinstallation of the application based on the modified first information store such that the desired change is reflected in the application after the reinstallation, i.e., the application is patched. Finally, the installer program stores a new installed state of the application in the second information store, the new installed state including an indication that the patch exists for the application and information related to the desired change to the application. (Chamberlain, Abstract and Col 1, lines 43 – 54) and The third information stream is termed the "cabinets" portion 506. The cabinets portion 506 include the actual program files, if any, added to the installed application by the patch. In addition, the cabinets portion 506 includes "patch bits," which are binary bits of information used during processing to modify or alter certain existing program files related to the installed application. Although illustrated here as an integral portion of the patch package 301, the cabinets portion 506 may be a file, such as a cabinet file, that is separate from the patch package 301. The cabinets portion 506 of the patch package 301 is analogous to the source 215 illustrated in FIG. 2. Since those skilled in the art are familiar with the use of cabinets or cabinet files in connection with application program patches, such files are not further described here (Chamberlain, col 9, lines 1 – 15)

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**Claim 47**

The method of claim 46 wherein selecting one of the at least two different versions comprises selecting one of at least two different release versions. As per claim 8.

**Claim 48**

The method of claim 46 wherein selecting one of the at least two different versions comprises selecting one of at least two different branch versions. As per claim 9.

**Claim 49**

The method of claim 46 further comprising the step of installing one of the at least two different versions of at least one updated binary file. As per claim 10.

**Claim 50**

The method of claim 49 further comprising the step of migrating a fix after installation of one of the at least two different versions of at least one updated binary file. As per claim 11.

**Claim 51**

The method of claim 50 further comprising the step of reverse migrating the fix prior to uninstalling the one of the at least two different versions of at least one updated binary file. As per claim 12.

**Claim 52**

The method of claim 49 further comprising the step of uninstalling the one of the at least two different versions of at least one updated binary file. As per claim 13.

**Claim 53**

The method of claim 46 wherein the selecting one of the at least two different versions of an updated binary file comprises migrating a fix on the target system. As per claim 14.

**Claim 54**

The method of claim 46 wherein the selecting one of the at least two different versions of an updated binary file comprises stepping up to a higher branch version than the initial branch version selected for installation. As per claim 15.

**Claim 55**

The method of claim 46 wherein the selecting one of the at least two different versions of an updated binary file comprises comparing the release version of the updated binary file with a release version of the file on the target system. As per claim 16.

**Claim 56**

The method of claim 46 wherein the selecting one of the at least two different versions of an updated binary file comprises comparing the branch version of the updated binary file with a branch version of the file on the target system. As per claim 17.

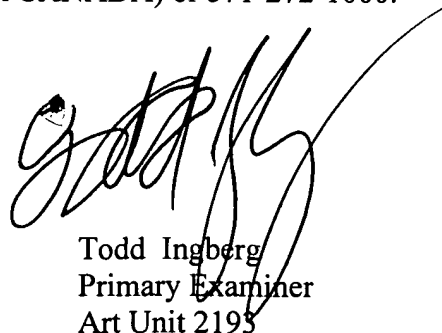
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***Correspondence Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd Ingberg whose telephone number is (571) 272-3723. The examiner can normally be reached on during the work week..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Todd Ingberg  
Primary Examiner  
Art Unit 2193

TI